

**Building restrictions, generally**  
(Civil Code Arts. 775, 776, and 780)

Existing law provides with respect to "building restrictions", a charge imposed by the owner of an immovable in pursuance of a general plan governing building standards, specified uses, and improvements. Building restrictions may be *established* by an act executed by the owner or all of the owners of the property. New law retains existing law and further provides that once *established*, building restrictions may be *terminated* or *amended* as provided by the law governing building restrictions.

Existing law provides that building restrictions *terminate* as provided in the act that establishes them. Existing law provides that in the absence of a provision providing for the termination of a building restriction in the act that established it, the building restriction may be *amended* or *terminated* by agreement of less than all of the owners, depending on how long the restrictions have been in effect. In interpreting this provision in conjunction with other provisions of law, the Louisiana State Supreme Court held in the recent case of *Brier Lake, Inc. v. Jones*, "that amendments by a mere majority vote can only lessen existing building restrictions, but an 'amendment' that creates more burdensome restrictions requires unanimous consent of all owners of the affected immovable property." New law retains existing law with respect to the *termination* of building restrictions, but specifically recognizes that building restrictions may also be *amended* as provided in the act that establishes them.

New law further provides that the provisions of the Louisiana Condominium Act, the Louisiana Timesharing Act, and the Louisiana Homeowners Association Act, the latter of which is being created herein, supersede any and all provisions of the Civil Code relative to building restrictions in the event of a conflict.

**Building restrictions of HOA, generally**  
(R.S. 9:1141.4 and 1141.5)

New law provides that the existence, validity, or extent of a building restriction affecting association property shall be liberally construed to give effect to its purpose and intent. Additionally, such restrictions affecting the building standards, specified uses, or improvements of association property may be established, amended, or terminated in accordance with the HOA Act. "Association property" is defined as all the property either held by the association or commonly held by the members of the association, or both, and lots privately held by members of the association. New law provides that such building restrictions may include the imposition of an affirmative duty, including the payment of monthly or periodic dues or fees, or assessments for a particular expense or capital improvement, provided they are reasonable for the maintenance, improvement, or safety of the residential planned community. New law provides that such building restrictions may also regulate common areas of a homeowners association, including passage upon common area streets. "Common area" is defined as property owned, or otherwise maintained, repaired, or administered by the association for the benefit, use, and enjoyment of its members.

**Add, amend, or terminate building restrictions of HOA**  
(R.S. 9:1141.6 and 1141.7)

New law provides for the establishment, amendment, or termination of building restrictions in accordance with the terms of the applicable community documents. However, in the absence of such documents, new law provides the following: building restrictions may be established by agreement of 3/4 of the lot owners; existing building restrictions may be made more onerous or increased by agreement of 2/3 of the lot owners; and existing building restrictions may be made less onerous, reduced, or terminated by agreement of more than 1/2 of the lot owners. New law provides that if building restrictions are established under new law, an owner may file a statement declining to be covered by those building restrictions. The statement must be filed with the association and with the clerk of court within thirty days after the building restrictions are established.

## **Enforcement of building restrictions**

(R.S. 9:1141.8 and 1141.9)

New law provides that community documents of residential planned communities have the force of law between the homeowners association and the individual lot owners and as between individual lot owners. The remedies for breach of any obligation imposed on lot owners or the association include damages, injunctions, or such other remedies as are provided by law.

New law provides that in addition to any other remedies provided by law or by the community documents for nonpayment of assessments, a homeowners association is entitled to utilize existing law establishing a privilege on lots of delinquent owners for nonpayment of assessments.

## **Miscellaneous provisions**

Effective upon signature of governor (June 16, 1999). Legislatively overrules *Brier Lake, Inc. v. Jones*, is remedial, and applies both prospectively and retroactively.

(Amends C.C. Arts. 776, 780, and 783; Adds R.S. 9:1141.1-1141.9)